

# REPORT to the KITTELY TOWN COUNCIL

**RESPONSIBLE INDIVIDUALS:** Ordinance Review Committee

**Date:** July 07, 2011

**Subject:** Traip HVAC Lease-Purchase Agreement and Ordinance

## **Background:**

- The existing Traip HVAC system was redesigned and renovated in the early 90s. The building is heated with two steam boilers fired with #2 oil. Steam is distributed to Area 1 and used with convectors, unit ventilators, and one air handling unit, to heat that area. Steam is piped to a hot water heat exchanger providing hot water to all other areas for heat.
- 2 <sup>1/2</sup> year data shows average use of 455,000 kwh of electricity and 40,000 gallons of fuel per year. System improvements and conversion to natural gas are expected to realize an annual utility cost savings of \$112,494 (one proposed contractor guaranty at 80% of that), thereby conceivably offering funds for repayment of a lease purchase agreement within seven years.
- As authorized in 20-A MRS §15915 (*encl 1*), the School Committee is permitted to enter an agreement for upgrade of energy and air quality improvements, not subject to the competitive bidding requirements of Title 5, §1743-A and Private and Special Law 1999, chapter 79, provided:
  - It is for operation or maintenance of the improvement for at least 5 years, or “the entire term of the financing agreement if longer than 5 years”.
  - Requires a guaranty by the contractor that the improvement will meet performance criteria set forth in the agreement for at least 5 years, or “the entire term of the financing agreement if longer than 5 years”.
  - Has a total contract cost, excluding interest and operating and maintenance costs, of less than \$2,000,000 for any school building.
  - Is coupled with a continuing maintenance service contract approved by BGS.
- Town Charter §4.05 charges the school committee and accords the authority to perform such duties (*encl 1*)
- Town Charter §6.11(2) allows the making of contracts or leases providing for payments beyond the end of the fiscal year, provided that such action was made or approved by ordinance (*encl 1*)

## **Current Situation:**

- The school committee’s selection process includes a request for qualifications advertised in the Portsmouth Herald and Kennebec Journal.
- The improvement project lease purchase payoff period is proposed to be seven years; the selected contractor must provide a guaranty that the improvement will meet performance criteria set forth in the agreement for at least seven years; and, the single school building project cost is \$574,375.00.

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- The school committee will interview not fewer than three project RFQ submittals, unless fewer than three are received.
- The school ordinance proposal request calls for authority to approve a contract for improvements and one for lease-purchase funding. A BGS approved annual Planned Service contract proposed is part of this consideration for statutory compliance.
- An "Opinion of Counsel" is required, as the amount is greater than \$100,000, that the lease represents a valid binding obligation on the lessee (the School) and that the lease is a qualified tax exempt obligation. Under the conditions of compliance with the statutory obligations, Attorney Stockmeyer is prepared to issue a favorable opinion to the chosen financial institution.
- Purpose, findings, and intent are shown in front matter of proposed ordinance (encl 2).
- Proposed ordinance is in the proper form and format for passage.
- Legal and technical considerations of this proposition were reviewed by ORC, Town Attorney, School Bond Counsel, Superintendent of Schools, School Business Manager, Town Manager, and Fire Chief.

**Recommendation:** Council public hearing, deliberation, and resolution

**Enclosures:**

1. 20-A MRS et al
2. Traip HVAC Ordinance Enact and Ordinance Authorizing Lease Purchase of HVAC System Upgrades for Traip Academy

**Title 20-A: EDUCATION**

**Part 7: SCHOOL FINANCE**

**Chapter 609: SCHOOL CONSTRUCTION**

**§15915. Energy service companies and 3rd-party financing**

1. Initial agreement. Any school administrative unit may enter into an agreement of up to 15 years with a private party, such as an energy service or 3rd-party financing company, for the design, installation, operation, maintenance and financing of energy conservation or combined energy conservation and air quality improvements at existing school administrative unit facilities. The school administrative unit's costs to enter into such an agreement are not applicable to the unit's school construction project costs, the debt service on which is eligible for subsidy purposes under section 15907. Such an agreement is deemed to be a professional service, which is not subject to the competitive bidding requirements of Title 5, section 1743-A, if the agreement:

**A. Provides for operation or maintenance of the improvement for at least 5 years or the entire term of the financing agreement if longer than 5 years;**

**B. Requires a guaranty by the contractor that the improvement will meet performance criteria set forth in the agreement for at least 5 years or for the entire term of the financing agreement if longer than 5 years; and**

**C. Has a total contract cost, excluding interest and operating and maintenance costs, of less than \$2,000,000 for any school building.**

A school administrative unit may select contractors for these professional services on the basis of a request for qualifications or a request for proposals and it is not required to use a competitive method set forth in this chapter and Title 5, section 1743-A and Private and Special Law 1999, chapter 79.

The selection process must include at a minimum a request for qualifications or a request for proposals that is advertised in a newspaper of general circulation in the school administrative unit and a newspaper of general circulation in the City of Augusta. The school administrative unit shall interview not fewer than 3 service providers unless a smaller number of service providers responds to the request for qualifications or requests for proposals. The performance criteria in the agreement is subject to approval by the Department of Administrative and Financial Services, Bureau of General Services.

A request for qualifications or proposals may not contain terms that require service providers to have more than 3 years of experience in the energy conservation field or the use of equipment that is not generally available to service providers or terms that are otherwise included for the purpose of bias or favoritism toward a particular service provider. Objections to the terms of a request for qualifications or proposals under this subsection are deemed waived if not delivered in writing to the office of the superintendent of schools in that school administrative unit within 21 days of the last publication of the newspaper advertisement.

2. Future operation. Any school administrative unit, at the termination of the agreement with the private party pursuant to this section, may acquire, operate and maintain the improvement, may renew the agreement with the private party or may make an agreement with another private party to operate and maintain the improvement.

**Extracts of selected sections of the Kittery Town Charter**

**“Sec. 4.05. General powers and duties.**

The school committee shall have all the powers conferred by law and shall perform all the duties imposed by law upon school committees in regard to the care and management of the public schools of the town.”

**“Sec. 6.11. Administration of budget.**

(2) .... However, except where prohibited by law, nothing in this charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent **the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action was made or approved by ordinance.**”

**AN ORDINANCE** relating to authorizing an agreement for upgrade of energy and air quality improvements to a municipal school building by enactment of a specific ordinance for a lease purchase agreement providing for payments beyond the end of the fiscal year, as more particularly set forth herein.

**WHEREAS**, The Kittery Town Council is authorized to enact this Ordinance, as specified in Section 2.07(3) of the Town Charter and 30-A M.R.S. §3001, pursuant to its powers that authorize the town, under certain circumstances, to provide for the public health, safety and welfare, not intending for Ordinance to conflict with any existing state or federal laws; and

**WHEREAS**, pursuant to 20-A MRS §15915, §4.05 of the Kittery Town Charter, and other applicable law, the School Committee as the governing body of the municipal school unit is authorized to enter into certain contracts for energy conservation and air quality improvements to school facilities including the financing of those costs; and

**WHEREAS**, pursuant to the last sentence of §6.11(2), of the Town Charter and other applicable law, the School Committee proposes to contract for capital improvements consisting of HVAC system upgrades for Traip Academy and to finance the costs of the project through a lease purchase agreement providing for payments beyond the end of the fiscal year, which payments shall be subject to annual appropriation; and

**WHEREAS**, the School Committee's selection process includes a request for qualifications that was advertised in a newspaper of general circulation in the town and a newspaper of general circulation in the City of Augusta; and

**WHEREAS**, the school committee will interview not fewer than 3 service providers, unless fewer than three responses are received; and

**WHEREAS**, the improvement project is for a period of seven years; the selected contractor has provided a guaranty that the improvement will meet performance criteria set forth in the agreement for at least seven years; and, the single school building project cost is less than statutory limit;

**NOW THEREFORE**, IN ACCORDANCE WITH TOWN CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS AN ORDINANCE AUTHORIZING LEASE PURCHASE OF HVAC SYSTEM UPGRADES FOR TRAIPI ACADEMY, 12 WILLIAMS AVENUE, KITTERY, BE ADOPTED IN THE FORM PRESENTED, CONTINGENT UPON SATISFACTORY COMPLIANCE WITH STATUTORY OBLIGATIONS AND REVIEW AND APPROVAL OF THE CONTRACTUAL AGREEMENTS by the ORDINANCE REVIEW COMMITTEE.

**Approved as to form:** {NAME}, Town Attorney

**INTRODUCED** and read in a public session of the Town Council on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and passed by a vote of \_\_\_\_\_-.

**THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery, Maine on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ {NAME}, Chairperson

**Attest:** {NAME}, Town Clerk

**Ordinance presented, July 11<sup>th</sup>, 2011, Regular Meeting, Kittery Town Council**

**“THE TOWN OF KITTERY HEREBY ORDAINS THAT** the School Committee, in the name and on behalf of the municipal school unit, is authorized to select a contractor for and approve and enter into a contract for a project for energy conservation and air quality improvements to school facilities at Robert W. Traip Academy, 12 Williams Avenue, Kittery, (the “Project”) on such terms as the School Committee or its authorized designee deems advisable; to select a lease finance company and to enter into a tax exempt lease purchase agreement with a non-appropriation clause to finance not more than \$574,375.00 of the costs of the Project (the “Lease”) on such terms not inconsistent herewith as the School Committee or its authorized designee deems advisable; and, to enter into such other agreements as may be necessary to effectuate the lease purchase financing of the Project, including without limitation an escrow agreement establishing a reserve fund for the purpose of funding the Project with the proceeds of the Lease;

**THAT** a copy of this Ordinance be filed with the Town Clerk; and

**THAT** pursuant to section 2.14(3) of the Charter, this Ordinance becomes effective at the expiration of 30 days after its adoption.”